

Members

Sen. Patricia Miller, Chairperson  
Sen. Robert Meeks  
Sen. Steve Johnson  
Sen. Rose Antich  
Sen. Vi Simpson  
Sen. Samuel Smith  
Rep. Charlie Brown  
Rep. William Crawford  
Rep. Susan Crosby  
Rep. Mary Kay Budak  
Rep. Gary Dillon  
Rep. David Frizzell



## SELECT JOINT COMMISSION ON MEDICAID OVERSIGHT

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Authority: IC 2-5-26

### MEETING MINUTES<sup>1</sup>

Meeting Date: December 11, 2001  
Meeting Time: 1:00 P.M.  
Meeting Place: State House, 200 W. Washington  
St., Senate Chambers  
Meeting City: Indianapolis, Indiana  
Meeting Number: 6

**Members Present:** Sen. Patricia Miller, Chairperson; Sen. Robert Meeks; Sen. Steve Johnson; Sen. Rose Antich; Sen. Vi Simpson; Rep. Charlie Brown; Rep. William Crawford; Rep. Susan Crosby; Rep. Mary Kay Budak; Rep. Gary Dillon; Rep. David Frizzell.

**Members Absent:** Sen. Samuel Smith.

Senator Patricia Miller called the meeting to order at 1:20 P.M.

#### **Mary Simpson, EDS**

Ms. Mary Simpson provided the Commission with a summary and analysis report of the Medicaid claims processed and paid by EDS in the first two quarters of state fiscal year (SFY) 2002. (See Exhibit 1.) Ms. Simpson discussed in general the contents of the

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

EDS report. In response to a question concerning the detection of fraud, Ms. Simpson explained to the Commission that EDS uses software that helps detect possible fraud in the Medicaid program. The Attorney General's office investigates potential fraud and EDS provides the Attorney General's office with relevant documents or other evidence of fraud. Ms. Simpson stated that in Texas, EDS does more of the investigative work in detecting Medicaid fraud.

### **Melanie Bella, Director, Office of Medicaid Policy and Planning (OMPP)**

Ms. Melanie Bella informed the Commission that OMPP is projecting the following savings for the rational drug therapy prior authorization prescription drug program: \$2.4 million savings in SFY 2002 and \$5.0 million savings in SFY 2003. For the brand medically necessary prior authorization prescription drug program, OMPP projects a \$0.5 million savings in SFY 2002 and \$0.6 million savings in SFY 2003.

Ms. Bella briefly discussed the Medicaid optional services chart which sets forth the state's costs for these optional services. (See Exhibit 2.) Ms. Bella informed the Commission that she would be revising the chart with the help of some lobbyists to more accurately reflect the state's Medicaid optional services. The Commission asked Ms. Bella whether OMPP had any recommendations on which Medicaid optional services should be cut to save the state money. Ms. Bella stated that OMPP had not yet determined which optional programs should be cut because these cuts would require legislative action. The Commission asked Ms. Bella to make recommendations to the Commission concerning possible cuts.

Ms. Bella informed the Commission that OMPP would be sponsoring a Medicaid forum on January 4, 2002. Ms. Bella said that the Commission would receive more details once the location of the forum is finalized.

Responding to a question concerning the high costs of OMPP contracting, Ms. Bella provided the Commission with a chart listing OMPP's expenditures for contracting in SFY 2001. (See Exhibit 3.) Ms. Bella stated that Indiana's expenditures are fairly comparable to other states' administrative expenditures. In response to a question regarding whether OMPP would be able to provide some of the contracted services in house, Ms. Bella stated that more personnel would be needed to do so.

### **Consideration of proposed legislation**

Senator Miller explained to the Commission that some of the bills from last session concerning Medicaid that were vetoed by the Governor were redrafted for the Commission's consideration. Senator Miller stated that there were also some new drafts to be considered by the Commission. Seven positive votes are needed by the Commission to officially recommend a proposed legislative draft to the General Assembly.

#### **PD 3474- Annual review of Medicaid nursing home residents**

PD 3474 (See Exhibit 4) requires a nursing facility certified to provide nursing facility care to Medicaid recipients to submit minimum data set (MDS) information for each of its patients annually to OMPP. The draft requires OMPP to: (1) evaluate the information under specified guidelines; and (2) counsel an individual on the services available to the individual if OMPP determines that the individual's needs can be met in a cost effective manner in a setting other than a nursing facility.

The bill draft was discussed. The Commission was informed by staff that there

were concerns with language on page 2, lines 21-24, section 5, which discussed an appeals process. The Commission adopted on consent an amendment to the draft that would remove this language. Upon a proper motion and second, the motion to recommend passage of PD 3474, as amended, passed by a vote of 11-0. Sen. Miller said that she would be looking for someone to help author this bill.

#### PD 3494- Mental Health

PD 3494 (See Exhibit 5) adds a psychiatrist to the controlled substances advisory committee and provides that a Medicaid recipient's access to a prescription drug for mental illness may not be restricted. This draft requires the controlled substances advisory committee to review the records maintained by the central repository for controlled substances regarding the prescribing of stimulant medications to children and report to the Legislative Council, Governor, and medical licensing board. The draft also requires OMPP to report to the Commission regarding the cost effectiveness of statutes allowing Medicaid recipients unrestricted access to prescription drugs that are prescribed for mental illness.

The bill draft was discussed. Upon a proper motion and second, the motion to recommend passage of PD 3494 passed by a vote of 11-0. Senator Antich agreed to author the bill.

#### PD 3520- Personal needs allowance

PD 3520 (see Exhibit 6) provides that certain elderly or disabled individuals who reside in certain facilities would be allowed a \$52 monthly personal allowance. The bill draft requires that a recipient of assistance under the federal Supplemental Security Income program who receives care in a hospital, nursing facility, or community residential facility for the developmentally disabled and whose income is less than the amount of the monthly personal allowance be paid the difference between the amount of monthly personal allowance and the recipient's income.

Mr. Paul Severance, representing United Senior Action, reminded the Commission that the personal needs allowance does not have a built in cost inflation index and that it is hard for an elderly person to purchase all of the person's personal items with the current \$50 personal allowance.

The Commission discussed the large fiscal impact statement that accompanied this bill draft and decided not to vote on the bill draft.

#### PD 3525- Emergency room services

PD 3525 (See Exhibit 7) requires that certain physician services provided in a hospital emergency department to a patient enrolled in the Medicaid risk-based managed care program by a physician who does not have a contract with the patient's managed care organization be paid at 100% of the rates payable under the Medicaid fee structure.

The Commission discussed the bill draft. Upon a proper motion and second, the motion to recommend passage of PD 3535 passed by a vote of 10-0.

#### PD 3533, PD 3989- Nursing home reimbursement system

PD 3533 (See Exhibit 8) and PD 3989 (See Exhibit 9) are drafts that require the state's Medicaid nursing home rate setting contractor to consider certain information when

setting payment rates. Both drafts prohibit FSSA from repealing an administrative rule regarding reimbursement to Medicaid nursing homes or amending the rule or adopting additional rules to reduce payments to nursing homes without specific statutory authority. In looking at the different language in PD 3533 and PD 3989, the Commission decided to pursue discussing the language contained in PD 3989. Ms. Bella stated that PD 3989's language limiting OMPP from reducing nursing facility reimbursement rates would set dangerous precedent and tie OMPP's hands in its attempt to cut costs. Ms. Bella commented that OMPP would like the flexibility to help with long term care and the use of waivers to provide care to people in the community.

The Commission voted, by voice vote, to delete SECTION 2 of PD 3989 which prohibited FSSA from repealing or amending reimbursement rates for nursing facilities. The Commission discussed the draft as amended. Upon a proper motion and second, the motion to recommend passage of PD 3989 as amended passed by a vote of 9-0. Senator Miller agreed to introduce the bill. PD 3533 was not voted on by the Commission.

#### PD 3546-Nursing home inspections

PD 3546 (See Exhibit 10) requires the State Department of Health to report to the Commission concerning nursing home inspections and requires certain information to be contained in the report. The Commission discussed the bill draft. Upon a proper motion and second, the Commission voted 8-0 to recommend passage of PD 3546. Senator Miller agreed to author the bill for introduction.

#### PD 3548- Leveraging federal funds for Medicaid

PD 3548 (See Exhibit 11) requires FSSA to identify certain information and develop Medicaid program or funding mechanisms to obtain additional federal Medicaid funds for health care services. This draft also requires the State Department of Health to seek Medicaid certification for services provided at the Veterans' Home.

The Commission discussed the bill draft. Upon a proper motion and second, the Commission voted 8-0 to recommend passage of PD 3548. Senator Johnson agreed to author the bill.

#### PD 3747- Prior authorization for drugs in Medicaid and CHIP

PD 3747 (See Exhibit 12) prohibits the use of prior authorization for antianxiety, antidepressant, and antipsychotic drugs under Medicaid and the children's health insurance program (CHIP). This draft provides that this prohibition does not apply to a formulary or prior authorization program operated by a managed care organization under the Medicaid or CHIP programs. PD 3747 establishes procedures to follow for requiring prior authorization for other drugs under the Medicaid and CHIP programs and allows the office to place limits on quantities dispensed or the frequency of refills for any covered drug for the purpose of preventing fraud, abuse, waste, overutilization, or inappropriate utilization or to implement disease management.

Ms. Bella stated that she believed PD 3747 reflected the agreement between OMPP and other interested parties. The Commission discussed the bill draft, and upon a proper motion and second, the Commission voted 8-0 to recommend passage of PD 3747. Senator Miller agreed to author the bill.

#### PD 3748- Prior authorization for drugs in Medicaid and CHIP

PD 3748 (See Exhibit 13) prohibits the use of prior authorization for antianxiety, antidepressant, and antipsychotic drugs under Medicaid and CHIP. (This bill draft differs from PD 3747 in that this bill's prohibition applies to a formulary or prior authorization program operated by a managed care organization under Medicaid or CHIP.) PD 3748 establishes procedures to follow for requiring prior authorization for other drugs under the Medicaid and CHIP programs and allows the office to place limits on quantities dispensed or the frequency of refills for any covered drug for the purpose of preventing fraud, abuse, waste, overutilization, or inappropriate utilization or to implement disease management.

The Commission discussed this bill draft. Upon a proper motion and second, the Commission voted 2-6 against recommending passage of PD 3748. PD 3748 did not receive the Commission's recommendation.

#### PD 3684- Risk-based managed care and mental illness

PD 3684 (See Exhibit 14) prohibits the mandatory enrollment in a risk-based managed care (RBMC) program of a Medicaid recipient or a child enrolled in CHIP with a primary diagnosis of a mental illness. Discussion was presented that it would be difficult to track recipients who have a mental illness primary diagnosis. The only current means to identify some of these individuals would be through the medical disability review process. An individual with a mental illness primary diagnosis may not necessarily qualify as medically disabled and therefore would not participate in the medical disability review process.

Ms. Julie Newland, Eli Lilly and Company, stated that many Medicaid recipients with mental illness are currently enrolled in Medicaid's primary care case management (PCCM) program. A law passed last session mandates enrollment for certain Medicaid recipients in the RBMC program in five counties. If an individual who is mentally ill is mandated to change the individual's enrollment from the PCCM program to the RBMC program, a result may be that these individuals will not have access to the individual's current doctors and prescriptions.

The Commission discussed this bill draft. Upon a proper motion and second, the Commission voted 2-5 against recommending passage of PD 3684. PD 3684 did not receive the Commission's recommendation.

#### PD 3612- Prior approval for drugs under Medicaid

PD 3612 (See Exhibit 15) requires a prior approval program for drugs prescribed to a Medicaid recipient to provide that: (1) a denial of prior approval must be made in accordance with generally accepted medical practices by a physician licensed in Indiana; and (2) a physician who prescribes a drug to a Medicaid recipient may override a denial of prior approval if the physician, in accordance with generally accepted medical practices, believes that failure to receive the prescribed drug could be injurious to the patient's health and documents the medical necessity of the drug in the patient's records. The Commission did not take any action on PD 3612.

#### PD 3600- Appointment of drug utilization review board

PD 3600 (See Exhibit 16) requires the Governor to solicit recommendations from the Speaker of the House of Representatives and the President Pro Tempore of the Senate before making an appointment to the Medicaid drug utilization review board. The Commission did not take any action on PD 3600.

PD 3515- Restructuring of FSSA

PD 3515 (See Exhibit 17) creates the interim study committee on restructuring FSSA and requires the committee to: (1) develop a plan to reorganize the Office of the Secretary of Family and Social Services; and (2) issue a final report. The Commission discussed the bill draft. Upon a proper motion and second, the Commission voted 7-0 to recommend passage of PD 3515. Senator Miller agreed to author the bill.

PD 3677- Office of Medicaid policy and planning

PD 3677 (See Exhibit 18) transfers the functions of OMPP from the Office of the Secretary of Family and Social Services to the State Department of Health. This bill also establishes: (1) the Division of Medicaid policy and planning within the State Department of Health; and (2) a legislative committee to prepare any legislation needed to implement the transfer of responsibilities. PD 3677 requires Medicaid policy decisions to be approved by an employee of the division holding an unlimited license to practice medicine and requires the implementation of a disease management program for Medicaid recipients with certain diseases. The Commission did not take any action on PD 3677.

Senator Miller adjourned the meeting at 3:35 P.M.